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No. 81-79

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

IN RE STATE OF MISSOURI, ET AL.,
Petitioners,

v.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
AND THE
HONORABLE CHARLES W. BAKER, ET AL.,
Respondents.

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FROM FINAL JUDGMENT ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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This supplemental brief of Respondents/Intervenors ("Arkansas Farmers") and Respondent/Trustee, Robert P. Lindsey, ("Trustee") seeks to comment on matters raised in Petitioners' First and Second Supplemental Briefs dated respectively August 12, 1981, and December 3, 1981; Petitioners' Reply Brief dated September 14, 1981; and Petitioners' Reply to Brief for the United States dated December 23, 1981.

It is undisputed that Trustee's Missouri Chapter 11 partnership debtor entities (Frisbee Cotton Company and James Gin & Elevator), had actual exclusive possession of all Missouri grain in their own elevator facilities as of the

date of the filing of the voluntary Chapter 7 petitions on August 11, 1980. On September 22, 1980, the Chapter 7 cases were converted to Chapter 11 proceedings. For the first time in their December 23, 1981, Reply Brief, Petitioners absurdly argue that a voluntary surrender by debtors of their Missouri grain warehouses under threats of intimidation on August 8, 1980, gave Petitioners "legal control" over the Missouri grain prior to the filing of the petitions. This action of the individual James Brothers was not binding on the Bankruptcy Court or the Trustee upon the voluntary petitions being filed on August 11, 1980. Petitioners did not seek to obtain the *ex parte* Missouri state court receivership orders authorizing them to seize the grain warehouses until August 12, 1980, and only then upon learning of the filing of the petitions. Petitioners never seriously until now have questioned Trustee's possessory interest in the Missouri grain. Possession of the grain has always been conceded in Trustee for the debtor entities and could have been compelled by him in any event by invoking 11 U.S.C. §542 and 11 U.S.C. §543 requiring custodians and/or third parties to turn over property of the estate. Postpetition with the knowledge and acquiescence of Petitioners, the debtors' employees continued in actual possession of the elevators, treated and turned the grain, and performed other functions of a grain warehouseman. Petitioners had neither actual nor constructive possession of the grain or the elevators. On August 15, 1980, Trustee was authorized by an Order of the Respondent Bankruptcy Court to operate the businesses of the debtors. Petitioners at all times wholly lacked dominion and control factually and legally over the debtors' operations. Therefore, by operation of 11 U.S.C. §541, the Missouri grain became property of the estate of these debtor entities since an estate was created by the commencement of the case under 11 U.S.C. §541(a). Further, under 11 U.S.C. §541(a)(1),

all legal or equitable interests of the debtor in property as of the estate. Petitioners surely do not seriously contend that they had actual physical possession of any of the Missouri grain as of date of the filing of the petitions. Under 11 U.S.C. §541 and 28 U.S.C. §1471, mere possession of property is sufficient to invoke the jurisdiction of bankruptcy courts under the Bankruptcy Reform Act of 1978. *In the Matter of GSVC Restaurant Corp.*, 1 *Collier Bankruptcy Cases*, 2d series, at page 727. At the time of the filing of the Chapter 7 petitions for the above Missouri partnership debtor entities, according to Petitioners' own audit reports approximately 1,071,604 bushels of milo, 150,269 bushels of soybeans, 43,313 bushels of corn, and 2,599 bushels of wheat were situated in the debtors' Missouri elevator facilities. At that time, and for several months thereafter, it was believed that the value of the Missouri grain was approximately $5 million. However, subsequent declines in market prices of the grain; actions of Petitioners; quality deterioration; and, some unauthorized removal of the grain have resulted in the present value of the net grain sale proceeds being approximately $3 million with interest.

Petitioners have already conceded in oral argument, in their pleadings, and from their own records and grain audit reports that Trustee on behalf of his debtor entities owns at least 2.3% of the Missouri grain. However, Trustee's entire interest in the Missouri grain sale proceeds is far greater. Pre-petition, the Missouri debtor entities administered by Trustee entered into several Uniform Grain Storage Agreements with Commodity Credit Corporation (an instrumentality of the United States and by far the largest adverse claimant to the Missouri grain in terms of bushels and dollars) for long term grain storage. Also, the Missouri debtor entities pre-petition entered into storage contracts with individual Missouri and Arkansas farmers. As of October 31, 1981, it was generally

conceded exclusive of set-off claims by the major adverse claimants to the Missouri grain that Trustee's accrued but unpaid storage charges (pre and post-petition) amounted to not less than $565,922.54. These storage charges were secured by an Article 7 Uniform Commercial Code storage lien (UCC 7-209) in favor of Trustee for the debtor entities. Therefore, Trustee has an Uniform Commercial Code lien on all Missouri grain for the accrued but unpaid storage charges due his debtor entities in addition to his outright ownership of a substantial amount of the grain. This lien may be enforced under UCC 7-210.

Further, under 11 U.S.C. §506(c), Trustee is entitled on behalf of his Missouri partnership debtor entities to recover "the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit of the holder of such claim." Trustee has determined that the gross amount of these post-petition costs and expenses attributable to the Missouri grain due him as of October 31, 1981, will amount to at least $902,298.56 when Trustee's fees, attorneys' fees, accounting fees, security expenses, trucking, fuel expense, interest, taxes, insurance and bond premiums, chemicals, insecticides, preservatives, labor, utilities, and the like, are fully considered. Therefore, Trustee's total present economic interest in the Missouri grain is at least $1,537,221.10 which Trustee can fully support by competent proof and evidence. Petitioners know this but are reluctant to discuss this aspect of the case in their supplemental briefs filed with this Court.

Petitioners contend that it is significant that the Eighth Circuit Court of Appeals found that the Trustee presented no documents of title to substantiate his claim of ownership of the Missouri grain. Under Petitioners' own Missouri Grain Warehouse Law, such presentation of documents of title is not required when the grain records of the ware-

houseman show an excess of grain by measurement at certain individual warehouses sufficient to meet all claims of receipt or scale ticket holders. See §411.517 of Missouri Grain Warehouse Law. Petitioners' own audit records indicate at various of the warehouses an overage position which under their own Missouri Grain Warehouse Law constitutes owned property of the warehouseman. Thus, no separate warehouse receipts or other documents are required.

Throughout their original petition and supplemental briefs, Petitioners leave the impression that it has already been determined that Trustee's ownership interest in the grain does not exceed 2.3%. Such contention is totally without merit. The conflicting ownership claims to the grain, the UCC security interest claims to the grain of First Tennessee Bank N.A.-Memphis, UCC Article 7 storage lien claims to the grain, equitable claims to the grain, and other claims including tracing claims have not yet been heard and determined by any court pending Trustee's filing of his Joint Plan of Reorganization which will dispose of all complex factual and legal issues over not only the Missouri grain, but also the Arkansas grain and all other property of the debtors' estates. Should the Trustee's Joint Plan of Reorganization be confirmed, all disputes relative to the Arkansas and Missouri grain will be resolved and claimants paid pursuant to the terms of the Trustee's Joint Plan. If not, incredibly complex issues of law and fact will have to be resolved by whatever court or courts of competent jurisdiction are finally determined to have subject matter jurisdiction over the Missouri grain sale proceeds. Trustee has taken the position that in the event of such extended litigation, it will be determined that the debtor entities own outright considerably more than 2.3% of the Missouri grain. It appears that some of the alleged negotiable warehouse receipts held by Missouri and Arkan-

sas farmers and Commodity Credit Corporation may not, as to form and substance, comply with Missouri law—§411.381 of Missouri Grain Warehouse Law. Also, some of the Missouri grain claimed by farmers is apparently pursuant to written contracts of sale. Title to this grain is vested in the debtors' estates and not the farmers. In addition, it appears that some Missouri farmers have "priced" their grain after depositing the same into the debtors' elevator facilities, thereby causing title to the grain to pass to Trustee's debtor entities. It also appears that Trustee has title to other quantities of Missouri grain since the parties to the transactions intended that a present "sale" would take place upon the grain being deposited into the Missouri warehouse and not a bailment. The price was to be set later by the farmer under UCC 2-305; and, under UCC 2-401(2) title to the grain passed immediately to Trustee's debtor entities. In short, difficult questions of law and fact requiring much testimony as to course of dealing and usage of trade under UCC 1-205 will be necessary to determine on a case by case basis each individual's claim to a kind of grain at a particular location. Petitioners would have this Court believe that such a process will be simple and expeditious. Nothing could be further from the truth. The process will be tedious, expensive, time consuming (12 weeks or more), and will likely cost the grain claimants at least $150,000 when the services of a master and his staff are considered. Respondent, Bankruptcy Court, has already appointed a master to hear and determine all adverse claims to the Arkansas and Missouri grain should such determination be necessary. Trustee anticipates that as a result of such complex litigation, if necessary, the debtors' ownership interests in the Missouri grain will increase substantially in comparison to the amount already conceded by Petitioners. Trustee, of course, is entitled to have these claims litigated in the Bankruptcy

Court under 28 U.S.C. §1471, 28 U.S.C. §1481, 11 U.S.C. §541, and 11 U.S.C. §362(a).

The grant of subject matter jurisdiction to bankruptcy courts under 28 U.S.C. §1471 is so broad and pervasive that almost any aspect or feature of a bankruptcy case can now be adjudicated and determined by the Bankruptcy Court—Legislative History to 28 U.S.C. §1471. It is, of course, well established that a bankruptcy court has jurisdiction to determine whether it has jurisdiction to enjoin a state prosecution—*Matter of Barth*, 2 *Collier Bankruptcy Cases*, 2d series, at page 1030; *In Re: Seeburg Corp.*, 2 *Collier Bankruptcy Cases*, 2d series, at page 880; *In Re: W. F. Hurley, Inc.*, 553 F.2d 1096 (8 Cir., 1977)—Legislative History to 11 U.S.C. §105 and 11 U.S.C. §362(b)(4). It has also been held under the Bankruptcy Reform Act of 1978 that a bankruptcy court, as an adjunct of the district court, has been granted pervasive jurisdiction over the debtor and all of its property, including property in dispute—*Matter of Aurora Cord & Cable Co., Inc.*, 1 *Collier Bankruptcy Cases*, 2d series, at page 486. In that case, the Bankruptcy Court determined that it had jurisdiction to resolve adverse claims to property where the Internal Revenue Service had levied on funds belonging to the debtor in order to secure payment of a disputed tax liability. The Court held that the dispute over the property was one "related to" the debtor's Chapter 11 proceedings and thus one of the grounds of jurisdiction under 28 U.S.C. §1471(b) was established. A bona fide dispute over an interest in property of the estate is one of the grounds for a sale of property free and clear of liens under 11 U.S.C. §363(f)(4). Thus, a bankruptcy court clearly has jurisdiction to hear and determine disputes over not just ownership claims but other interests as well in property of the estate—*Circus Time, Inc.* v. *Oxford Bank & Trust*, et. al., 2 *Collier Bankruptcy Cases*, 2d series, at page 282; and *In the matter of Farmers*

Grain Exchange, Inc., 1 BCD 1621 (1975)—*In Re: Bowling Green Mill & Co., Inc.*, 132 F.2d 279 (6th Cir., 1942).

It has been held, however, that a bankruptcy court should not exercise jurisdiction over a controversy involving one creditor, who has possession of the debtor's property and a valid security interest in it, and another creditor claiming an interest in that property under state law when the trustee or debtor makes no claim to the property—*In Re: Lunsford*, 4 *Collier Bankruptcy Cases*, 2d series, at page 1200. In that case, the Bankruptcy Court discussed at length the jurisdictional grant to bankruptcy courts under 28 U.S.C. §1471 and concluded:

> "It is clear that such jurisdiction extends always to the property rights or interests of the Debtor; thus, the Bankruptcy Court has exclusive jurisdiction of all of the property wherever located of the Debtor as of the commencement of the case. Section 1471(e) of Title 28."

In that particular case, the property of the estate was reduced to cash from the sale of the debtor's crops prepetition and was in the hands of the Farmers Home Administration prior to the filing of the petition. Also, the Farmers Home Administration appeared to have a security interest in the property which was not claimed by the Trustee. The Bankruptcy Court in the *Lunsford* case, however, stated:

> "If Trustee were to undertake recovery of this property on some specified grounds of the Bankruptcy Code, it is clear that it would involve property claimed by this estate which would confer jurisdiction upon the Court."

In the instant case, not only is the "property" in question (the Missouri grain sale proceeds) in the possession of Trustee, but the property is being claimed by Trustee to satisfy his debtors' ownership rights to a sub-

stantial amount of the grain, Article 7 UCC storage liens on the Missouri grain for accrued but unpaid pre and post-petition storage charges, and his claims that the Missouri grain should bear its proper part of "the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit of the holder of such claim" as authorized under 11 U.S.C. §506(c). Therefore, Trustee's bona fide claims to the Missouri grain aggregating in excess of $1.5 million do, as a matter of law, confer subject matter jurisdiction upon the Bankruptcy Court under 28 U.S.C. §1471, 28 U.S.C. §1481, 11 U.S.C. §541, 11 U.S.C. §363, and 11 U.S.C. §105. Petitioners' arguments concerning "phantom ownership" and "preliminary jurisdiction" are without merit as the Trustee's claims to the Missouri grain are far broader and more substantial than mere minute ownership rights.

The Brief of the United States in Opposition filed in December, 1981, contains an excellent discussion of some of the more recent cases construing 11 U.S.C. §362(b)(4) and 28 U.S.C. §1471. Trustee and Respondents/Intervenors ("Arkansas Farmers") are in general agreement with the position taken by the United States in its analysis of three (3) recent United States Courts of Appeals decisions construing the scope of 11 U.S.C. §362(b)(4). Trustee and Respondents/Intervenors are in full agreement with the United States that these decisions are consistent with each other on the facts of each case and are not in conflict. Therefore, there is no compelling reason for this Court to review at this time the so-called "police and regulatory power" exception to 11 U.S.C. §362(a) as codified in 11 U.S.C. §362(b)(4).

Trustee and Respondents/Intervenors, however, would like to bring to the attention of this Court several recent Bankruptcy Court decisions interpreting 11 U.S.C.

§362(b)(4) not cited in the brief of the United States. In the *Matter of Alessi*, 4 *Collier Bankruptcy Cases*, 2d series, at page 1003, an Illinois Bankruptcy Court held that the action of a state regulatory board should be upheld in its hearing and decision not to grant a debtor a permanent racing license as long as it was enforcing its "police power" solely and was not acting in a manner designed to affect the debtor-creditor relationship. The Bankruptcy Court held the latter would be barred by the supremacy clause of the U. S. Constitution because federal legislation exists covering debtors under the bankruptcy clause. In the instant case, however, Petitioners seek to affect the debtor-creditor relationship by assuming dominion and control over the Missouri grain sale proceeds and the property of the estates of the debtors and making a liquidating distribution of the same in five (5) separate states court proceedings separate and apart from the dominion and control of Trustee and the Arkansas Bankruptcy Court. It is absurd for Petitioners to contend their contemplated action does not amount to an "insolvency proceeding" or liquidation of the debtors' property. Under §411.519(6) of the Missouri Grain Warehouse Law, "insolvency" of the warehouseman is one of the grounds for appointment of a receiver to operate or liquidate the business of the warehouseman. The August 12, 1980, receivership orders authorized the seizure and liquidation of not only the grain but other of the debtors' property. Not only are Petitioners seeking to protect the Missouri grain claimants' pecuniary interests in the grain, but they are also seeking with no regard to priorities of distribution contained in the U. S. Bankruptcy Code to distribute the Missouri grain sale proceeds without the Trustee and Bankruptcy Court first determining the nature and kind of claims, objections to claims, possible counterclaims, preference actions, and other necessary functions of bankruptcy courts under the

Bankruptcy Reform Act of 1978 and prior law. The most severe kind of prejudice will result to Trustee and the creditors if he has to litigate the adverse conflicting claims of several hundred grain claimants in five (5) separate Missouri state court proceedings without the benefit of the substantive and procedural provisions and safeguards of the U. S. Bankruptcy Code. Not only will administrative expenses be increased, but further delays are inevitable. Trustee submits that such state action is barred under the supremacy clause of the United States Constitution and the above provisions of the U. S. Bankruptcy Code.

A similar distinction was made by a Texas Bankruptcy Court in the case of *In Re: Dan Hixson Chevrolet Company,* 4 *Collier Bankruptcy Cases,* 2d series, at page 1237. There the Bankruptcy Court held that proceedings before the State Motor Vehicle Commission were subject to the automatic stay and that the exception granted for police and regulatory actions under 11 U.S.C. §362(b)(4) was not applicable. The Commission would not have been enforcing its regulatory powers, but instead was deciding the rights of private parties which should occur in a judicial forum. The Court in that case, significantly, distinguished the Fifth Circuit's holding in the case of *In Re: National Labor Relations Board* v. *Evans Plumbing Company,* 639 Fed. 2d 291, cited by Petitioners in one of their Supplemental Briefs.

Another case of significance in construing the limitations on 11 U.S.C. §362(b)(4) is the case of *In Re: Sandmar Corporation,* 4 *Collier Bankruptcy Cases,* 2d series, at page 1263. In that well reasoned decision, a New Mexico Bankruptcy Court concluded that the United States Bankruptcy Court and not a tribal court of an Indian tribe was the only forum for resolution of disputes over property rights between an Indian tribe and a non-Indian debtor

since the dispute must be decided under a comprehensive and uniform federal law (Bankruptcy Reform Act of 1978). The Bankruptcy Court further held that the eviction of a debtor in default under a lease agreement was not the proper exercise of the tribe's "police or regulatory power".

A petition for writ of prohibition against a bankruptcy court and the bankruptcy judge of that court is not appropriate under 28 U.S.C. §1651 where ownership of the grain and other legal and equitable interests in the grain present factual issues and where Petitioners had available other adequate remedies by appeal, intervention, and requests for abstention. One of the leading cases decided by this Court as to whether a petition for writ of prohibition was appropriate and should have been granted by an inferior appellate court is *In Re: Chicago, Rock Island & Pacific Railway Company, Petitioner*, 255 U.S. 373, 41 S.Ct. 288, 65 L.Ed. 631 (1921). In that case, this Court pronounce the following guidelines for issuance of writs of prohibition:

> "There is a well-settled rule by which this Court is guided upon applications for a writ of prohibition to prevent a lower court from wrongfully assuming jurisdiction of a party, of a cause, or of some collateral matter arising therein. If the lower court is clearly without jurisdiction, the writ will ordinarily be granted to one who, at the outset, objected to the jurisdiction, has preserved his rights by appropriate procedure, and has no other remedy. *Re: Rice*, 155 U.S. 396, 30 L. Ed. 198, 15 Sup. Ct. Rep. 149. If, however, the jurisdiction of a lower court is doubtful (*Re: Muir*, decided by this court January 17, 1921 [254 U.S. 622, Ante 383, 41 Sup. Ct. Rep. 185]), or if the jurisdiction depends upon a finding of fact made upon evidence which is not in the record (*Re: Cooper*, 143 U.S. 472, 506, 509, 36 L. Ed. 232, 243, 244, 12 Sup. Ct. Rep. 453), or if the complaining party has an adequate remedy by appeal

> or otherwise (*Re: Tiffany*, 252 U.S. 32, 37, 64 L. Ed. 443, 445, 40 Sup. Ct. Rep. 239; *Ex Parte Harding*, 219 U.S. 363, 55 L. Ed. 252, 35 L.R.A. (N.S.) 392, 31 Sup. Ct. Rep. 324), the writ will ordinarily be denied."

See also *United States v. Boe*, 453 Fed. 2d 151; *In Re: Nichols*, 114 Fed. 2d 364 (5th Cir., 1940), where that Court held that a writ of prohibition would not lie where petitioners rights were protected by appeal taken in a bankruptcy proceeding; and *Leimer v. Reeves*, 184 Fed. 2d 441 (8th Cir., 1950), where that Court held that prohibition is primarily a restraining rather than a corrective remedy and will not lie for grievances or errors which may be redressed or corrected in the ordinary course of judicial proceedings by other remedies provided by law. See also *Barker v. United States District Court*, et al., 185 Fed. 2d 582 (9th Cir., 1950), where the Ninth Circuit Court of Appeals held that prohibition against a judge is a drastic and extraordinary remedy reserved for realy extraordinary causes and circumstances. Although the facts and circumstances of the instant case may be somewhat unusual, they certainly were made extraordinary and even inflammatory by actions of Petitioners in resisting the jurisdiction of Respondents over the Missouri grain and over operations of debtors' Missouri elevators. Petitioners have always had the right of appeal; intervention; and request for abstention, either as to a certain aspect of the case (the Missouri grain) under 11 U.S.C. §1471(d) or the entire proceedings affecting the Missouri operations of the debtor entities under 11 U.S.C. §305(a). For whatever reason, Petitioners did not elect to choose less drastic remedies and now cannot complain of the denial by the Eighth Circuit Court of Appeals of their request for issuance of an extraordinary writ.

Even should this Court determine that the contemplated actions of Petitioners were not automatically stayed under 11 U.S.C. §362(a) as being a proceeding by a govern-

mental unit to enforce such governmental unit's police or regulatory power under 11 U.S.C. §362(b)(4), nevertheless Respondent, Bankruptcy Court, has the unquestioned power and authority under 11 U.S.C. §105 to issue a separate independent injunction against Petitioners to enjoin their interference with property of the debtors' estates. Having shown that Trustee on behalf of debtor entities has substantial claims of various types to the Missouri grain sale proceeds aggregated in excess of $1.5 million, Respondent, Bankruptcy Court, may issue an injunction to protect its own jurisdiction under 11 U.S.C. §105, 28 U.S.C. §1651, and 28 U.S.C. §1481. This is abundantly clear under the Legislative History to 11 U.S.C. §362(b), the pertinent part of which is as follows:

> "Subsection (b) lists five exceptions to the automatic stay. The effect of an exception is not to make the action immune from injunction.
>
> The court has ample other powers to stay actions not covered by the automatic stay. Section 105, of proposed title 11, derived from Bankruptcy Act section 2a(15), grants the power to issue orders necessary or appropriate to carry out the provisions of title 11. The bankruptcy courts are brought within the scope of the All Writs Statute, 28 U.S.C. §1651 (1970), and are given the powers of a court of law, equity, and admiralty (H.R. 8200, §243(a), proposed 28 U.S.C. §1481). Stays or injunctions issued under these other sections will not be automatic upon the commencement of the case, but will be granted or issued under the usual rules for the issuance of injunctions. By excepting an act or action from the automatic stay, the bill simply requires that the trustee move the court into action, rather than requiring the stayed party to request relief from the stay. There are some actions, enumerated in the exceptions, that generally should not be stayed automatically upon the commencement of the case, for reasons of either policy or practicality. Thus, the court will have to determine on a case-by-case basis

whether a particular action which may be harming the estate should be stayed."

Injunctions by bankruptcy courts to protect their own jurisdiction and to prevent interference by governmental entities with their proceedings and to protect property of the trustee and debtors' estates are fairly common. *In Re: Shippers Interstate Service, Inc.*, 618 Fed. 2d 13; *In Re: Bel Air Chateau Hospital, Inc.*, 611 Fed. 2d 1251; *In Re: W. F. Hurley, Inc.*, 553 Fed. 2d 1096; *In Re: Saugus General Hospital, Inc.*, 19 *Collier Bankruptcy Cases* 651; *Stout* v. *Green*, 131 Fed. 2d 995; *Duggan* v. *Sansberry*, 327 U. S. 499 (1946); *Schatzman, Trustee* v. *Department of Health, et al.*, 2 *Collier Bankruptcy Cases*, 2d series, 639; and, *The Seeburg Corp.* v. *NLRB*, 2 *Collier Bankruptcy Cases*, 2d series, 880.

Trustee, his counsel, and his certified public accountants have spent the last year in negotiating, drafting, preparing, and finalizing Trustee's Joint Plan of Reorganization for his Chapter 11 debtors and Disclosure Statement. Trustee, his counsel, and his certified public accountants have also spent countless hours analyzing and investigating approximately 600 claims filed against Trustee's debtor entities. These important pleadings will be filed by Trustee shortly so that all complex claims and disputes over the Arkansas and Missouri grain sale proceeds may be resolved fairly and expeditiously without further costly delay and litigation. The return to grain claimants, especially in Missouri, will be substantial. At this advanced stage of these Chapter 11 cases with a final settlement and resolution of all disputes over the grain sale proceeds at hand, it would be inequitable and unjust for this Court to delay further distribution to the grain claimants and other creditors of the debtors' estates by issuing a writ of certiorari. Indeed, it is difficult to conceive of the kind of relief this Court could fashion to benefit petitioners. Petitioners long

ago conceded that Respondent, Bankruptcy Court, had jurisdiction over the Missouri grain by conceding that Trustee owned at least 2.3% of the grain. Trustee has previously demonstrated to this Court that Trustee's interest in the fungible commingled Missouri grain is far greater when his debtors' additional ownership claims are evaluated, storage claims are taken into consideration, and reimbursement for costs of preserving and protecting the grain are analyzed. Based on these undisputed facts, this Court cannot determine that Respondent, Bankruptcy Court, has no jurisdiction over the Missouri grain or its sale proceeds. At the most, this Court could only return the case to Respondent Bankruptcy Court for further factual determinations with respect to jurisdictional issues. It is clear, based on the present facts, that these jurisdictional issues will be decided adversely to Petitioners. And, of course, any such decision making process will result in further expense and delay to the prejudice of the creditors of the debtors' estates. It is also interesting to note that no claimant to the Missouri grain sale proceeds has sought to intervene in support of Petitioners Petition for a Writ of Certiorari. The parties with the most to lose economically have absolutely no interest in this Court issuing a writ of certiorari to review the jurisdictional decision of the Eighth Circuit Court of Appeals.

Finally, Petitioners' remedy is not the issuance of a writ of certiorari from this Court but remedial legislation from the Congress of the United States. Petitioners and others have been active for several months in seeking to have the Bankruptcy Reform Act of 1978 as well as Title VII, Chapter 10 of the United States Code, dealing with agricultural warehouse licensing and operations, amended. The thrust of this proposed legislation is to require bankruptcy courts to expedite the determination of grain ownership and other liens on the grain in the event of a bank-

ruptcy proceeding for a public grain warehouse. The proposed legislation would set time limits on the bankruptcy courts' determination of interests in the grain and would also establish an elaborate system for distributing the proceeds and assessing costs, expenses, and the like against the grain or its sale proceeds. Although substantial opposition apparently developed to the proposed legislation, it is Trustee's information that the Senate of the United States has already passed the proposed legislation and that similar legislation is now pending in the House of Representatives Judicial Committee awaiting further action. This legislation, should it become law, although technically ill-advised in certain areas, will solve many of the federal-state conflicts with respect to jurisdiction over grain situated in bankrupt elevators. This will, of course, not resolve the jurisdictional issues in the instant case, but will apparently alleviate some of these problems in similar future cases. In any event, the Congress of the United States is better equipped than this Court to solve these problems which affect not just Petitioners and other states similarly situated, but farmers, banking institutions, the Commodity Credit Corporation, the Farmers Home Administration, federally chartered production credit associations, and other lending institutions. Contemplated action in this area by Congress is still another reason why Petitioners' Petition for Writ of Certiorari should be denied.

In conclusion, the very essence of the exception to the automatic stay provisions of 11 U.S.C. §362(a) as codified in 11 U.S.C. §362(b)(4) is a valid and proper exercise by a governmental unit of its police and regulatory powers. Such governmental regulation must be confined to the public health, safety, and welfare or else such purported actions will be automatically stayed. This is especially true when governmental action disguised as "regulation" affects the pecuniary interest in property of the debtor

and/or seeks to liquidate the debtor's property with a distribution to creditors in violation of the supremacy clause of the U.S. Constitution and the substantive provisions of the U.S. Bankruptcy Code. This is the goal of petitioners in the instant case and such is clearly prohibited under existing law. The intended purpose of the governmental action must be carefully analyzed and given a narrow constitution—*Florida State University Law Review* at page 369 and *Schatzman* v. *Department of Health and Rehabilitative Services*, 4 B.R. 704 (S.D. Fla., 1980).

Respondent/Trustee and Respondents/Intervenors ("Arkansas Farmers") contend the Petition for Writ of Certiorari should be denied.

Respectfully submitted,
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